IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

Crl.L.P..No. 968 of 2007()

AGAINST THE JUDGMENT IN ST.NO.1428/2006 OF JFCM-II, PATHANAMTHITTA

PETITIONER/COMPLAINANT:

THE PATHANAMTHITTA DISTRICT CO OPERATIVE BANK LIMITED, HEAD OFFICE, PATHANAMTHITTA REPRESENTED BY POWER OF ATTORNEY HOLDER, M.SASIKUMAR, SUPDT, RECOVERY CELL, THE D.C.B. LTD, HEAD OFFICE, PATHANAMTHITTA, RESIDING AT MEKADU VEETTIL, IMALI MURI, OMALLOOR VILLAGE, PTA.

BY ADV. SRI.P.C.SASIDHARAN
ADV.SRI.O.V. MANIPRASAD

RESPONDENTS: ACCUSED & STATE

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1. B.ANEESH, KALAYIL HOUSE, THAZHEVETTIPPURAM, PATHANAMTHITTA.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R2-BY P.P.SRI. THOMAS JOHN AMBOOKKAN

THIS CRIMINAL LEAVE PETITION HAVE COME UP FOR ADMISSION ON 11/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.L.P.NO.968 OF 2007

Dated this the 11th day of October, 2007.

O R D E R

This is an application for special leave to appeal against the judgment in S.T.No.1428/2006 on the file of the Judicial Magistrate of First Class-II, Pathanamthitta. The petitioner/complainant filed a petition before the court below under Section 138 of the N.I.Act alleging that the 1st respondent had taken a loan of Rs.50,000/= from the complainant Bank and as per the agreement, the amount should be repaid by instalments. As some instalments became due, the Bank had presented the cheque given by the 1st respondent before the Bank of the respondent claiming the said amount as due from the 1st respondent. The case of the 1st respondent before the court was that he had taken a loan agreeing to re-pay the said loan amount by instalments and at the time of taking of the loan, the Bank had accepted certain stamp papers and signed blank cheques for the mode of payment of the instalments and as some of the instalments became due, the petitioner/Bank sent a notice and after issuing the notice, petitioner/Bank presented the

cheque, which was given as security at the time of taking of the loan, for recovering the entire loan amount taken by the 1st respondent. But, when the said cheque was presented for encashment, the same was dishonoured on the ground of insufficiency of fund with the account of the 1st respondent. Hence, on complying the statutory provisions regarding notice and on seeing that the amount has not been repaid, the complaint has been filed.

2. Though, before the court it was alleged that the cheque in question was issued by the 1st respondent for re-payment of the entire loan amount, there is no account showing balance amount or even closing balance stood in the name of the 1st respondent. The trial court, after considering the entire evidence adduced on behalf of the petitioner/Bank and also the stand taken by the 1st respondent when he was questioned under Section 313 of the Code, found that the cheque in question was not issued for the discharge of any legally enforcible debt, at the same time, the evidence adduced would not show that the amount, which now claimed by the Bank is the total amount of the loan availed by the 1st

respondent and for the discharge of the entire loan amount, the said cheque has been given. In the above circumstances, by the judgment impugned, the trial court found that there is no evidence to show that the cheque in question is supported by any consideration apart from the loan sanctioned against the 1st respondent and that the loan is also not closed and further that the petitioner Bank had not proved that the cheque was issued for the discharge of any amount legally enforcible other than the loan account stood in the name of the 1st respondent. For the recovery of the loan amount, if there is any default, the Bank itself has got its own course and not by using the security cheque presented by the 1st respondent for collection of the entire amount. Apart from that, the entire account produced before the court also would not show that an amount of Rs.51,904/= is already due from the 1st respondent Bank. In all other respects, the trial court found that the petitioner Bank failed to prove that they are entitled for any relief claimed in the petition.

3. After going through the judgment and hearing the learned counsel appearing for the petitioner/complainant, this Court is of the

view that finding of the trial court is based on evidence. It is also submitted by the learned counsel that the trial court had opined that it is a fit case to take proceedings under Section 250 of the Cr.P.C against the Bank. It is now submitted before this Court that as per M.C.No.24/2007, proceedings have been already started against the petitioner Bank under Section 250(1) of the Code of Criminal Procedure.

4. After having considered the entire facts and the case in hand, this Court is of the view that it is only proper for the trial magistrate to drop the proceedings for which the petitioner Bank may file a petition separately before the concerned court.

With the above observations, this petition is dismissed.

K. THANKAPPAN, JUDGE.

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